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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/785,445

02/24/2004

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EXAMINER

MATZEK, MATTHEW D

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

08/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/785,445	Applicant(s) WANG ET AL.	
	Examiner MATTHEW D. MATZEK	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,8-27,32,33 and 40-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,8-27,32,33 and 40-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/2/2008 has been entered.

Response to Amendment

2. The amendment dated 6/2/2008 has been fully considered and entered into the Record. Amended claims 1, 32, 40 and 44 contain no new matter. Claims 1-5, 8-27, 32, 33 and 40-45 remain pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-5, 8-27, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otto (US 4,316,928) in view of Nun et al. (US 2003/0013795 A1).

a. Otto discloses a method of making a fiber containing substrate, including steps of providing a fiber containing substrate (10) having a first surface and a second surface (see Fig. 1), and face finishing at least the first surface of the substrate. The face finishing is a mechanical treatment of the substrate, accomplished by exposing at least the first surface of the substrate to one or more abrasive surfaces (11,11a). The process of Otto provides a substantially uniform modification to the surface of the fabric (abstract). A uniform modification of the surface of the fabric results in greater than 20% of said surface being

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treated. A wide variety of fabrics may benefit from being processed according to Otto including woven, knitted and nonwoven fabrics (col. 6, lines 25-30). The face finishing forms integral microscopic surface structures, as in claim 1; see col. 3, lines 19-59, col. 6, lines 53-54 (disclosing that the finish is not apparent to the naked eye), and Figs. 9 and 17, showing 350x magnification of the surface. Furthermore, the substrate of Otto does have integral microscopic surface structures including projections (see protrusions disclosed in col. 3, lines 22-25) and the method of abrading disclosed by Otto would clearly result in the fabric having a roughened surface. Example 1 looked at under magnification has filaments broken to some extent but are predominately extensively modified by the formation of lamella shaped protrusions on the fiber surfaces and by the formation of scar type surface modifications on the fiber surfaces. The Gessner-sanded samples by contrast show a substantial number of cut and broken fibers with only very minor modifications of the surface characteristics of the individual fibers. The current claims recite "portions having a plurality of substantially unbroken fibers" and as such Examiner takes the position that since Example 1 only has some broken filaments, there would necessarily be portions of the surface of the article containing a plurality of substantially unbroken fibers, thereby meeting the claim.

b. Amended claims 1, 32, 40 and 44 now recite the use of diamond grit having an average grit size of from about 600 to about 1200 to form the integral microscopic surface structures. Otto discloses the use of sanding paper of grit size of about 600 (col. 8, lines 18-25) as abrasive means in process that would form integral microscopic surface structures. Examiner takes the position that since abrasive means with common grit size

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are used by Applicant and Otto the two processes would form the same integral microscopic surface structures. Otto fails to teach the use of a repellent component or the addition of small particles.

c. Nun et al. disclose a self-regenerating, self-cleaning hydrophobic surface formed when particles are secured on a carrier that is itself a mixture of particles and binder (abstract). Elevations and Depressions are formed by particles being secured to the surface by the carrier [0030]. The preferred size of the particles ranges from 20 nm to 100 microns [0031]. The distance between adjacent particles on the surface ranges from 0 to 10 particle diameters [0032]. The particulate may be silica including fumed silica [0035]. The binding carrier that coats the surface of the article may be cross-linked [0040] and may comprise acrylates or urethane acrylates. It can be advantageous for the binding polymer to comprise compounds having fluorine-containing groups such as perfluorinated acrylic esters. The particles may be applied to fabrics for use as umbrellas [0065].

d. Since Otto and Nun et al. are from the same field of endeavor (i.e. treated fabrics), the purpose disclosed by Nun et al. would have been recognized in the pertinent art of Otto.

e. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Otto with the coating motivated by creating a self-cleaning, hydrophobic fabric as disclosed by Nun et al.

f. Although Otto and Nun et al. do not explicitly teach the claimed Roughness factor and integral microscopic structure size, it is reasonable to presume that said property and

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structure is inherent to the combined invention. Support for said presumption is found in the use of like materials (mechanically surface-finished textile that requires 350x magnification to view the protrusions). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed Roughness factor and integral microscopic structure size would obviously have been present one the combined product is provided. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80.

g. Claim 27 is rejected as Otto provides a broad teaching as to the fabrics that may be surface-finished. This teaching is interpreted to include all conventional fabrics including a laid scrim.

4. Claims 40-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otto (US 4,316,928) in view of Nun et al. (US 2003/0013795 A1) as applied to claim 32 above, and further in view of Morrison (US 4,343,853). The disclosures of Otto and Nun et al. fail to teach the use of at least one additional layer of material.

a. Morrison teaches a “two-face” fabric comprising a visible face fabric and a backing fabric (col. 2, lines 10-68). A primary objective of the fabric is to create an article that is anti-microbial even though both fabric faces have not been treated (col. 3, lines 8-17).

b. Since Otto and Morrison are from the same field of endeavor (i.e. treated fabrics), the purpose disclosed by Morrison would have been recognized in the pertinent art of Otto.

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c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the combined invention of Otto and Nun et al. with the second fabric layer of Morrison motivated by imparting anti-microbial protection to two fabric faces while maintaining the advantages of naturally occurring, untreated fibers in one of the fabrics (abstract, Morrison).

Response to Arguments

5. Applicant's arguments filed 6/2/2007 have been fully considered but they are not persuasive.

6. Applicant argues that Otto and Nun et al. fail to provide for the claimed invention. As addressed above Examiner takes the position that the combination of the aforementioned references does in fact render the claimed invention obvious over the prior art.

7. Applicant argues that they are familiar with the Otto reference and that it results in many broken fibers which conflicts with the instantly claimed invention. Example 1 looked at under magnification has filaments broken to some extent but are predominately extensively modified by the formation of lamella shaped protrusions on the fiber surfaces and by the formation of scar type surface modifications on the fiber surfaces. The Gessner-sanded samples by contrast show a substantial number of cut and broken fibers with only very minor modifications of the surface characteristics of the individual fibers. The current claims recite “portions having a plurality of substantially unbroken fibers” and as such Examiner takes the position that since Example 1 only has some broken filaments, there would necessarily be portions of the surface of the article containing a plurality of substantially unbroken fibers, thereby meeting the claim.

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8. Applicant argues that the Nun reference fails to demonstrate its applicability to complex structured textile surfaces having irregular surfaces and fails to demonstrate durability of the treatment against laundering and abrasion for textile substrates. Examiner has previously addressed how one of ordinary skill in the art would have found it obvious to have used the invention of Nun on various textiles. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., durability) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

9. Applicant argues that Otto and Nun et al. are not from the same field of endeavor (i.e. treated fabrics), and therefore, the purpose disclosed by Nun et al. would not have been recognized in the pertinent art of Otto. Otto is directed to the mechanical surface finishing of textiles, such as a wide variety of fabrics including wovens, knits and nonwovens (col. 6, lines 25-28). The Nun et al. reference is directed to a self-regenerating, self-cleaning hydrophobic surface treatment for use on a variety of substrates including shower curtains, umbrellas and other non-rigid articles [0065] for outdoor use (abstract). Both inventions are directed to fabrics that have been treated to provide the final product with enhanced properties.

10. Applicant argues that there is no motivation, or apparent reason, to combine Otto with Nun et al. Applicant continues by arguing Otto does not teach or suggest the need for any further fabric treatments after the mechanical face-finishing of the fabric. A holding of obviousness can be based on a showing that there was "an apparent reason to combine the known elements in the fashion claimed." KSR, 127 S. Ct. at 1740-41, 82 USPQ2d at 1396. In other

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words, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness,.” *Id.*, 127 S. Ct. at 1741, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). However, this reasoning is not limited to the problem the patentee was trying to solve; “any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed,” *KSR*, 127 S. Ct. at 1742, 82 USPQ2d at 1397 (emphasis added). The motivation to modify *Otto* comes from the secondary reference *Nun et al.* It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of *Otto* with the coating motivated by creating a self-cleaning, hydrophobic fabric as disclosed by *Nun et al.*

11. Applicant argues that even if the combination of references were made there is no reasonable expectation of success that modifying the substrates taught by *Otto* with the chemical treatment taught by *Nun* would result in Applicant’s claimed invention and the substrates of *Nun* cannot be treated according to the processes of *Otto*. Examiner’s combination of *Otto* and *Nun et al.* would result in the treating the fabric of *Otto* with the treatment of *Nun et al.* There is no evidence of record and no basis to believe that the polymeric coating and particles of *Nun* would not adhere to the treated fabric of *Otto* or that doing so would adversely affect the integral microscopic surface structures.

12. Applicant argues *Morrison* fails to overcome the deficiencies of the combination of *Otto* and *Nun et al.* and that there is no motivation to combine *Otto* and *Morrison*. Examiner has only relied upon *Morrison* to provide for an additional layer of material. The other structural

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limitations have been provided for in the rejection section of this action. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the combined invention of Otto and Nun et al. with the second fabric layer of Morrison motivated by imparting anti-microbial protection to two fabric faces while maintaining the advantages of naturally occurring, untreated fibers in one of the fabrics (abstract, Morrison).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW D. MATZEK whose telephone number is (571)272-2423. The examiner can normally be reached on M-F, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571.272.1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew D Matzek/
Examiner, Art Unit 1794

/Norca L. Torres-Velazquez/
Primary Examiner, Art Unit 1794